

Introduced by Senator Romero

February 13, 2002

An act to amend Sections 6931 and 19381 of, and to add Sections 6931.5 and 19381.5 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1400, as introduced, Romero. Taxation: judicial relief.

The California Constitution, the Sales and Use Tax Law, and provisions pertaining to the administration of franchise and income tax laws prohibit the issuance of any injunction, writ of mandate, or other legal or equitable process to prevent or enjoin the assessment or collection of those taxes, but permit an action to be maintained after the tax is paid to recover the tax claimed to be illegal.

This bill would permit an action to determine the validity of an amount of any of those taxes if the plaintiff has filed a bond to guarantee payment of the amount of the assessment and other amounts, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6931 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 6931. (a) No injunction or writ of mandate or other legal or
- 4 equitable process shall issue in any suit, action, or proceeding in
- 5 any court against this ~~State~~ *state* or against any officer of the ~~State~~



1 *state* to prevent or enjoin the collection under this part of any tax
2 or any amount of tax required to be collected.

3 (b) *An action may be maintained in accordance with Section*
4 *6931.5 to determine the validity of an amount of tax. During the*
5 *pendency of any action as so described, the collection of any*
6 *amount of tax that is the subject of that action shall be limited as*
7 *specified by Section 6931.5.*

8 SEC. 2. Section 6931.5 is added to the Revenue and Taxation
9 Code, to read:

10 6931.5. (a) Notwithstanding any other provision of law,
11 within one year after an assessment becomes final an action to
12 determine whether an assessment is void in whole or in part may,
13 subject to subdivisions (b), (c), (d), (e), and (f), be brought against
14 the board if the plaintiff files with the board a bond to guarantee
15 the payment of the amount of the assessment and any additional
16 amount, including interest and penalties, that may reasonably be
17 expected to become due during the first year of the action. No other
18 provision of law shall be construed to require that the amount of
19 a bond filed pursuant to this subdivision differ from the bond
20 amount required by this section.

21 (b) With respect to a taxpayer who files a bond in accordance
22 with subdivision (a), all of the following apply:

23 (1) The filing of the bond does not toll the accrual of interest
24 with respect to the disputed tax assessment.

25 (2) No penalty for late payment shall be assessed upon the
26 disputed tax assessment with respect to which the bond is filed.

27 (3) If at any time during the pendency of the action the trial
28 court determines that the amount of the bond has become
29 insufficient to provide the guarantee described in subdivision (a),
30 the plaintiff shall increase the amount of the bond to an amount that
31 is sufficient to provide that guarantee.

32 (4) No more than once a year during the pendency of the action
33 or during the pendency of any appeal by the plaintiff of the trial
34 court’s decision in that action, the State Board of Equalization
35 shall, by written notice to the plaintiff, require the plaintiff, no
36 sooner than 60 days after the date of that notice, to increase the
37 amount of the bond to an amount that is sufficient to guarantee
38 additional interest accruing during the year. Any plaintiff
39 receiving a notice as described in the preceding sentence may, as



1 an alternative to increasing the amount of the bond as required by
2 that notice, pay the additional interest accruing during the year.

3 (c) The amount and terms of the bond and the sureties on the
4 bond authorized by subdivision (a) must be approved by a judge
5 of the trial court hearing the action, and that approval shall not be
6 unreasonably withheld.

7 (d) Notwithstanding any other provision of law, the bond may
8 be issued only by an admitted surety. The court shall follow the
9 rules, definitions, and procedures set forth in Sections 995.030,
10 995.040, 995.050, 995.110, 995.120, 995.140, 995.150, 995.160,
11 995.190, 995.320, 995.330, 995.340, 995.350, 995.360, 995.370,
12 995.380, 995.420, and 995.430 of, and Article 6 (commencing
13 with Section 995.610) to Article 15 (commencing with Section
14 996.510), inclusive, of Chapter 2 of Title 14 of Part 2 of, the Code
15 of Civil Procedure. If approval is obtained in accordance with
16 subdivision (c), no further collection of any assessed amount that
17 is the subject of the action shall be made during the pendency of
18 that action.

19 (e) The plaintiff, or the agent or attorney of the plaintiff, shall
20 state under oath that a bond has been approved and filed in
21 accordance with this section.

22 (f) Liability on the bond may be enforced by the trial court if
23 the assessment is determined to be valid and is not paid within 30
24 days after the judgment on the action becomes final.

25 (g) This section applies to assessments that become final either
26 before, or on or after, the effective date of the act adding this
27 section, but does not authorize the filing of any action that, without
28 regard to this section, is barred by operation of law, including the
29 doctrine of res judicata, as of the effective date of the act adding
30 this section.

31 SEC. 3. Section 19381 of the Revenue and Taxation Code is
32 amended to read:

33 19381. (a) No injunction or writ of mandate or other legal or
34 equitable process shall issue in any suit, action, or proceeding in
35 any court against this state or against any officer of this state to
36 prevent or enjoin the assessment or collection of any tax under this
37 ~~part; provided, however, that any part.~~

38 (b) *An action with respect to disputed taxes may be maintained*
39 *in accordance with either of the following:*



1 (1) Any individual after protesting a notice or notices of
2 deficiency assessment issued because of his or her alleged
3 residence in this state and after appealing from the action of the
4 Franchise Tax Board to the State Board of Equalization, may
5 within 60 days after the action of the State Board of Equalization
6 becomes final commence an action, on the grounds set forth in his
7 or her protest, in the Superior Court of the County of Sacramento,
8 in the County of Los Angeles or in the City and County of San
9 Francisco against the Franchise Tax Board to determine the fact of
10 his or her residence in this state during the year or years set forth
11 in the notice or notices of deficiency assessment. No tax based
12 solely upon the residence of such an individual shall be collected
13 from that individual until 60 days after the action of the State
14 Board of Equalization becomes final and, if he or she commences
15 an action pursuant to this section, during the pendency of the
16 action, other than by way of or under the jeopardy assessment
17 provisions of this part.

18 (2) An action may be maintained in accordance with Section
19 19381.5 to determine the validity of an amount of tax. During the
20 pendency of any action as so described, the collection of any
21 amount of tax that is the subject of that action shall be limited as
22 specified by Section 19381.5.

23 SEC. 4. Section 19381.5 is added to the Revenue and Taxation
24 Code, to read:

25 19381.5. (a) Notwithstanding any other provision of law,
26 within one year after an assessment becomes final an action to
27 determine whether an assessment is void in whole or in part may,
28 subject to subdivisions (b), (c), (d), (e), and (f), be brought against
29 the Franchise Tax Board if the plaintiff files with the Franchise Tax
30 Board a bond to guarantee the payment of the amount of the
31 assessment and any additional amount, including interest and
32 penalties, that may reasonably be expected to become due during
33 the first year of the action. No other provision of law shall be
34 construed to require that the amount of a bond filed pursuant to this
35 subdivision differ from the bond amount required by this section.

36 (b) With respect to a taxpayer who files a bond in accordance
37 with subdivision (a), all of the following apply:

38 (1) The filing of the bond does not toll the accrual of interest
39 with respect to the disputed tax assessment.



1 (2) No penalty for late payment shall be assessed upon the
2 disputed tax assessment with respect to which the bond is filed.

3 (3) If at any time during the pendency of the action the trial
4 court determines that the amount of the bond has become
5 insufficient to provide the guarantee described in subdivision (a),
6 the plaintiff shall increase the amount of the bond to an amount that
7 is sufficient to provide that guarantee.

8 (4) No more than once a year during the pendency of the action
9 or during the pendency of any appeal by the plaintiff of the trial
10 court's decision in that action, the Franchise Tax Board may, by
11 written notice to the plaintiff, require the plaintiff, no sooner than
12 60 days after the date of that notice, to increase the amount of the
13 bond to an amount that is sufficient to guarantee additional interest
14 accruing during the year. Any plaintiff receiving a notice as
15 described in the preceding sentence may, as an alternative to
16 increasing the amount of the bond as required by that notice, pay
17 the additional interest accruing during the year.

18 (c) The amount and terms of the bond and the sureties on the
19 bond authorized by subdivision (a) must be approved by a judge
20 of the trial court hearing the action, and that approval shall not be
21 unreasonably withheld.

22 (d) Notwithstanding any other provision of law, the bond may
23 be issued only by an admitted surety. The court shall follow the
24 rules, definitions, and procedures set forth in Sections 995.030,
25 995.040, 995.050, 995.110, 995.120, 995.140, 995.150, 995.160,
26 995.190, 995.320, 995.330, 995.340, 995.350, 995.360, 995.370,
27 995.380, 995.420, and 995.430 of, and Article 6 (commencing
28 with Section 995.610) to Article 15 (commencing with Section
29 996.510), inclusive, of Chapter 2 of Title 14 of Part 2 of, the Code
30 of Civil Procedure. If approval is obtained in accordance with
31 subdivision (c), no further collection of any assessed amount that
32 is the subject of the action shall be made during the pendency of
33 that action.

34 (e) The plaintiff, or the agent or attorney of the plaintiff, shall
35 state under oath that a bond has been approved and filed in
36 accordance with this section.

37 (f) Liability on the bond may be enforced by the trial court if
38 the assessment is determined to be valid and is not paid within 30
39 days after the judgment on the action becomes final.



1 (g) This section applies to assessments that become final either
2 before, or on or after, the effective date of the act adding this
3 section, but does not authorize the filing of any action that, without
4 regard to this section, is barred by operation of law, including the
5 doctrine of res judicata, as of the effective date of the act adding
6 this section.

